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1 THE COURT: Let me try and deal with some of these
2 issues and then we will take a break for a few minutes.

3 Let me start with the accounts that we have been
4 talking about whereas I indicated there are 421 or so accounts
5 or names perhaps also augmented by the accounts that Mr. Carter
6 just spoke about that will relate to the embassy bombings which
7 then there was a specific request that DIB close and perhaps
8 certain other similar requests. For that universe of accounts
9 which I gather is larger than 421 but -- accounts or names
10 which I gather is larger than 421 but probably no larger than
11 500, I am going to direct that to the extent it hasn't already
12 been done, the account opening and if there is any account
13 closing paperwork, the periodic statements and the other
14 electronic information that exists such as the wire transfer
15 information that Mr. Cottreau alluded to, be produced.

16 And I am going to live it to the two sides to talk
17 about a timeline because obviously I don't know what is
18 realistic. If I have to set a date unilaterally I will but I
19 would rather that there be an informed discussion about that
20 and hopefully some agreement.

21 MR. COTTREAU: Your Honor, if I could just interject
22 to clarify one point?

23 THE COURT: Yes.

24 MR. COTTREAU: Because I didn't have a chance to
25 respond to Mr. Carter's suggestion.

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1 THE COURT: Sure.

2 MR. COTTREAU: We have no idea, sitting here today, I
3 have no idea the 16 names that the bank was allegedly asked to
4 close in the wake of the embassy bombings. That's not
5 something that's in any of the papers in this case and it is
6 the first I have ever heard of it.

7 My only suggestion would be so that we can get --
8 completely comply with your Honor's order is this list of not
9 more than 500 names that the plaintiffs have that they just
10 gather it, send it to us as search terms, and we will query our
11 database using those as search terms using the same methodology
12 that we did to do the 261.

13 MR. CARTER: Your Honor, the only hesitation I have is
14 that it is public reporting that indicates that there was a
15 request from the authorities to Dubai Islamic Bank to close the
16 accounts. It doesn't identify what those accounts are. Again,
17 we would have expected that the public reporting of that
18 information would have prompted an internal inquiry that there
19 would have been a communication and so we are asking that that
20 be searched.

21 THE COURT: I presume that this would have been a
22 notification akin to the ones that I have copies of. If the
23 bank is unable to identify it and Mr. Cottreau is nodding in
24 such a way that he indicates they can't, then I guess the onus
25 falls to you to provide them some further information about

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1 those accounts.

2 As you move forward in discovery there are a number of
3 areas like there are in a lot of domestic cases where one side
4 takes the view that there should be some information. I really
5 can't deal with the "there should be" sort of allegations even
6 if I am inclined to agree with whichever side is making that
7 assertion because absent proof that there is such a category of
8 documentation, the notion that there should be doesn't really
9 enable me to take action absent some indication of spoliation.

10 So, for those 500 accounts/names I have indicated what
11 is to be produced in the first instance, and once that's been
12 accomplished there needs to be a discussion quickly by the two
13 sides about what will follow on from that, whether it's akin to
14 what would happen in a domestic circumstance with a grand jury
15 subpoena, namely let's circle these entries and ask you to look
16 at those, whether Mr. Carter and his colleagues circle every
17 entry on every periodic statement and Mr. Cottreau comes back
18 to me and says we will be at this 20 years from now or, you
19 know, it remains to be seen. But, we need to take this first
20 step and then we will see where we go from there.

21 Were you about to say something, Mr. Carter?

22 MR. CARTER: Your Honor, the only comment I had with
23 regard to your Honor's statement about the 16 accounts
24 following the embassy bombings is that DIB's position at this
25 point has been that they're irrelevant and therefore not within

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1 discovery and so all we really need is a verification that the
2 search has been conducted to try and find those accounts or to
3 find the information related to those accounts. I don't know
4 that the discovery responses right now provide us with the
5 simple answer we have searched and are unable to find any
6 information pertaining to this request.

7 MR. COTTREAU: Your Honor, I have never heard the
8 number 16 and I could be mistaken, but I don't believe I have
9 heard that.

10 The only thing that I am aware of that Mr. Carter
11 cited in his papers that supports the notion that this bank was
12 asked to close any accounts is a report in the "L.A. Times"
13 years and years and years after the fact that said that the
14 bank was asked to close certain accounts. It didn't identify
15 the number of them, didn't identify a single name. And so,
16 that's why we are a little bit lost. We have checked our own
17 internal papers to the extent that we have them. We are in a
18 pre-e-mail age and largely a pre-Internet age at the bank and
19 we don't have any records.

20 So, if I could just clarify your Honor's order so I
21 make sure that we can carry it forth precisely? The plaintiffs
22 are going to provide us with a list of not more than 500 names
23 that we will search using the same methodology that we did to
24 search the 261 --

25 THE COURT: Well, no. They can't provide you with the

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1 152 names because they don't know what those names are.

2 MR. COTTREAU: Your Honor, if it would ease this and
3 your Honor wants to order it, just so that we can have
4 precision in the list because the list, to me, is something I
5 can actually accomplish, we will make available, on your
6 Honor's order, the unredacted version of the list of 152 names.

7 THE COURT: Well, that was implicit in what I have
8 said, but yes. So ordered.

9 MR. COTTREAU: So, plaintiffs will provide us a list
10 with 500 names, we will search it using the same methodology
11 that we searched the 261 names, and if there are any accounts
12 for any of those individuals, we will produce the first three
13 items that I talked about out of four items that we have;
14 account opening documentation, complete account statements, and
15 any electronic transaction data that exists in our primary
16 legacy account record keeping system.

17 THE COURT: Except to the extent that the account is
18 still open, perhaps.

19 Well, forget whether it is still open, except to the
20 extent that the non-legacy system also has relevant data. It
21 may not, but.

22 MR. COTTREAU: The legacy system covers the period
23 that we have agreed and maybe that's one thing that is missing
24 from your Honor's order. We agreed to produce and the
25 plaintiffs have never objected, all account statements from

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1 1992, January 1, 1992 through September 11, 2001. And that's
2 what we have used in this case with plaintiffs, that's what we
3 have used beginning in 2012 when we produced account statements
4 and that's what they have already.

5 THE COURT: Well, I am sure they don't object to the
6 onset data.

7 What is your position on the end date?

8 MR. CARTER: The only problem with the end date, your
9 Honor, is it is not going to reflect accounts being frozen or
10 investigation of accounts immediately after 9/11 so I think if
11 we carry that date forward simply to the traditional deadline
12 we have used which is 2004, we would be fine.

13 THE COURT: I think that's reasonable, Mr. Cottreau.

14 MR. COTTREAU: So, through 12/31/2004?

15 THE COURT: Precisely.

16 In terms of the Shariah board, I do think that the
17 requests -- and we are dealing with concepts rather than
18 specific requests today, do strike me as overbroad.

19 In terms of the Fatwabs that are not banking related,
20 we didn't talk about this in great detail but the plaintiff's
21 papers suggest that there were some people who are actively
22 supporting terrorism who have been affiliated with the Shariah
23 board over time. The bank has either produced or offered to
24 produce the individuals who were on the board for the relevant
25 time period.

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1 The plaintiffs, from that list, may identify specific
2 individuals who they have reason to believe, perhaps in their
3 individual capacity have either individually or together with
4 others, issued Fatwahs which are of interest because they're
5 not routine banking Fatwahs but these individuals and others
6 going off in a different direction and to the extent that the
7 plaintiffs do that, I will require the bank to produce any
8 information that it has.

9 The fact that somebody may have acted in their
10 individual capacity is largely irrelevant if the bank has
11 evidence that relates to those acts undertaken in the
12 individual capacity. So, I hope that instruction is
13 intelligible.

14 MR. COTTREAU: Your Honor, if I can clarify it to make
15 sure I have it?

16 THE COURT: Sure.

17 MR. COTTREAU: The Fatwahs that the plaintiffs have
18 produced are, in some cases, web postings on these individuals'
19 personal websites. Those aren't bank records, we don't -- by
20 and large I hear you that we should check our records to make
21 sure we don't maintain a copy but that's our obligation --

22 THE COURT: Well, let me rephrase it. It would be to
23 undertake a reasonable search to find such documents.

24 MR. COTTREAU: If we have Fatwahs related to violent
25 pronouncements of those individuals?

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1 THE COURT: Yes. I think that's the gist of it.

2 MR. COTTREAU: Okay.

3 MR. CARTER: I think that's the gist of it, your
4 Honor. The language doesn't always say violence.

5 THE COURT: Right.

6 I am looking through my notes but, Mr. Carter, are
7 there other broad categories I should be addressing?

8 MR. CARTER: Your Honor, the only other area is
9 whether or not there is information about investigations of DIB
10 pertaining to the embassy bombings and this '99 meeting, and in
11 particular with respect to the '99 meeting whether or not a
12 search has been conducted to truly identify everything that
13 exists and, second, whether or not DIB has the practical
14 ability to find out what was going on at that meeting by virtue
15 of its relation to the government.

16 THE COURT: Well, some of that was covered by my
17 comments about the fact that because something may be
18 implausible doesn't give anyone the ability to take steps of
19 any sort. Presumably, as discovery moves forward, there will
20 be depositions at some stage and if something concrete occurs
21 then you can bring it back to the Court.

22 In terms of the 1999 meeting, we talked about that.
23 What was the other one you mentioned?

24 MR. CARTER: The embassy bombings investigation, your
25 Honor.

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1 THE COURT: I take it the bank's position is it has
2 undertaken a good faith search for such documents?

3 MR. COTTREAU: Your Honor, yes.

4 THE COURT: And produced anything it has?

5 MR. COTTREAU: Yes.

6 THE COURT: So, that falls into the ruling I just
7 made. At this juncture there is not much more I can do.

8 MR. CARTER: Your Honor --

9 MR. COTTREAU: Your Honor, I just want to make sure
10 that I understood your question.

11 With respect to the embassy bombings, are we talking
12 about the 16 names or --

13 THE COURT: No. We are talking about, I believe,
14 investigations or other responses that the bank internally may
15 have had in terms of checking whether it had troublesome
16 accounts or relationships. And I gather you have made that
17 inquiry and produced anything you could find.

18 MR. COTTREAU: I don't think we have produced on that
19 topic, your Honor.

20 THE COURT: What's the basis for withholding that?

21 MR. COTTREAU: The basis that we were trying to do on
22 this was in the midst of 108 requests so it is not something
23 that we did in isolation. In the context of 108 requests and
24 the 2,900 names, as we were having these discussions with
25 plaintiffs, we had to draw a line.

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1 THE COURT: Okay.

2 MR. COTTREAU: And the line that we suggested that be
3 taken was that the 9/11 Commission Report had identified that
4 the real planning for 9/11 began when Khalid Sheikh Mohammed
5 joined al Qaeda in late 1998 or early 1999 and that we would do
6 a fulsome search of al Qaeda-related documents after that date.

7 THE COURT: Okay. And as to that issue, the one we
8 are talking about, I am inclined to agree with the plaintiffs.
9 So, there you need to expand the search and I gather there are
10 documents that will be produced as a result.

11 MR. CARTER: Your Honor, the only remaining issue is
12 with regard to the 1999 meeting, it is not merely an issue of
13 whether DIB has searched its internal records, there is also
14 this issue of whether or not, given its relationship, it has
15 the practical ability.

16 I think one of the areas of concern we have is you
17 have a member of the Maktoum family who is the prime minister
18 of UAE and also the largest shareholder of Dubai Islamic Bank
19 and does he attend the meeting, perhaps, with the U.S.
20 officials in his capacity as an official and then disclaim the
21 knowledge in his capacity as the primary shareholder of DIB.

22 And so, we are just trying to assess whether or not
23 there is a practical ability to get this information.

24 THE COURT: Mr. Cottreau?

25 MR. COTTREAU: I don't know of any way to get the

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1 information. The shareholders of the bank were now 27 percent
2 owned by something called the Investment Corporation of Dubai
3 which I understand is an investment instrument of the ruling
4 family of Dubai. But, in terms of this 1999 meeting, as I
5 tried to express today, I don't even know where the meeting
6 happened. It would strike me that one possibility and one
7 logical possibility is that it happened at the UAE Central Bank
8 which is in Abu Dhabi and had nothing to do with the government
9 of Dubai itself. But, as a practical matter, I don't have any
10 way of accessing any records.

11 THE COURT: I am not going to make a direction as to
12 that because I think it is a complicated area and there are
13 issues of sovereign immunity and we will deal with that as we
14 go down the road.

15 Let's take a 10-minute break and just so you can tee
16 up what is next, the charity defendants.

17 MR. COTTREAU: Thank you, your Honor.

18 THE COURT: Sure.

19 (Recess)

20 THE COURT: Let's go to the central charity
21 defendants, the gang of four.

22 MR. CARTER: You are stuck with me for one more, your
23 Honor, and then I am going to turn it over to Mr. Haefele for a
24 while.

25 THE COURT: Thank goodness.

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1 MR. CARTER: Yes, I agree.

2 Your Honor, the four charity official defendants were,
3 as you know, remanded by the Second Circuit through its
4 decision in 2013 in which the Court held that the allegations
5 concerning those defendants were always with the charities
6 which they controlled gave rise to the inference that they
7 conducted their tortious conduct at the United States business
8 directing support to al Qaeda through charities under their
9 command. And so, the Second Circuit remanded the claims
10 essentially for discovery relating to the nature of their roles
11 and the kinds of decisions they were responsible for making
12 within the charitable organizations they controlled and
13 supervised.

14 To date, the four charity officials have produced
15 virtually no documents in response to plaintiff's discovery
16 requests. In total, the four defendants have produced a mere
17 82 pages and those consist largely of the affidavits and
18 biographical statements they had earlier filed in the
19 litigation in support of their motions to dismiss in which,
20 among other things, several of them claimed that they were
21 officials of Saudi government entitled to claim sovereign
22 immunity, a defense that they have since withdrawn.

23 The charity officials seek to excuse their failure to
24 produce documents by arguing that certain of the charities that
25 are also defendants in the litigation have received similar

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1 document requests and are producing documents, and that
2 plaintiffs should look exclusively to those productions in
3 relation to the discovery we are seeking from the individuals.

4 Obviously, your Honor, the rules require that the
5 defendants respond individually to the document requests
6 directed to them and the fact that other defendants may or may
7 not be producing documents relating to the same areas of
8 inquiry does not relieve them of their independent discovery
9 obligations.

10 The related problem is that even if a party to
11 litigation could rely on the separate discovery responses of
12 another party to satisfy its obligations, the reality is that
13 many of the charities these officials had roles in are not
14 meaningfully participating in discovery at all. So, for
15 example, your Honor, Abdullah Naseef was not merely the
16 secretary of the Muslim World League, he also founded
17 Rabidi Trust and that, your Honor will recall, was designated
18 by the United States government, failed to participate in
19 discovery in the case, and was ultimately defaulted by this
20 Court.

21 Naseef also had relationships with individuals of
22 considerable interest. For example, he was responsible for
23 appointing Wael Jelaidain to his position in the Muslim World
24 League; also responsible for appointing Osama Bin Laden's
25 brother-in-law, Mohammed Jamal Khalifa to the designated IIRO

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1 branch in the Philippines. Abdullah Bin Saleh Obaid was, in
2 addition to his secretary of Muslim World League also an
3 officer of Rabidi Trust and of many of the Sanabel entities
4 that were incorporated in the items.

5 Your Honor will recall that the Sanabel entities in
6 the United States have stated that they no longer have any
7 records relating to the periods of greatest interest including
8 the period when Obaid was an officer of the entity, Abdullah
9 bin Muhsen al Turki, your Honor, is currently the head of the
10 Muslim World League and therefore in a position to direct that
11 entity to respond to request relating to his position.

12 Before that, he was the Saudi Minister of Islamic
13 Affairs from 1993 to 1999. In that capacity he had a
14 supervisory role over all of the kingdom's proselytizing
15 organizations according to the 9/11 Commission, the Muslim
16 World League, the International World Islamic Relief
17 Organization, the World Assembly of Muslims and al-Haramain
18 Islamic Foundation.

19 We also know, your Honor, that al-Haramain filed an
20 affidavit early in the case when it was still participating in
21 which it specifically stated that al-Haramain works under the
22 supervision of the Audi Minister of Islamic affairs who
23 appoints its board members and senior management personnel.

24 And, again, al-Haramain Saudi Arabia is no longer
25 participating in the proceedings.

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1 So, there are a range of relationships and roles that
2 extend beyond those pertaining to the handful of charities that
3 are participating in discovery and the fact that those
4 charities are participating in discovery does not relieve the
5 defendants of their obligation to produce their own records.

6 I think, your Honor, we are reminded of the therefore
7 with Mr. Jelaidain where the Court ultimately issued an order
8 requiring him to undertake a full-court press not only to
9 locate documents within his physical custody, but under his
10 care and control. And, it is warranted here.

11 In all candor, your Honor, we have some concern that
12 these defendants have not undertaken searches of their own
13 records precisely because they think it would reflect the
14 nature of their dealings, among others, with senior Saudi
15 officials.

16 The position these individuals held with these
17 charitable organizations and in the Saudi government are
18 positions of tremendous distinction within the kingdom and
19 within the Islamic world. By way of an example, your Honor,
20 the MWL -- Muslim World League -- recently produced a document
21 pertaining to defendant al Turki's appointment as the head of
22 the Muslim World League in which the King equates it to being
23 appointed as a minister of the Saudi state.

24 These individuals have, in addition to the roles of
25 the charities, held very senior government positions -- the

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1 Shariah council, the Supreme Council for Islamic Affairs. In
2 fact, the head of the Muslim World League automatically sits on
3 the Supreme Council of Islamic Affairs.

4 THE COURT: Say that again.

5 MR. CARTER: The head of the Muslim World League sits,
6 by automatic designation -- or sat, I should say -- on the
7 Supreme Council for Islamic affairs. It is our understanding
8 that the current King has disbanded the Supreme Council for
9 Islamic affairs more recently. But, in all years prior,
10 automatically sat.

11 We know a fair amount, your Honor, about how decisions
12 are made within these organizations from our own
13 investigations. The Council for Islamic Affairs is or was the
14 policy making body responsible for formulating Saudi Arabia's
15 Islamic policy abroad. A principal component of its foreign
16 policy, according to affidavits the kingdom filed in the
17 litigation, the ministry of Islamic affairs, in turn, was the
18 operational body responsible for deploying that strategy
19 principally through these ostensible charitable organizations
20 and so we have close coordination at the highest levels and at
21 the levels that these particular defendants would have operated
22 with very senior officials about making decisions about how
23 they were going to operate.

24 We are additionally concerned, your Honor, based on
25 the fact that you will recall that Sameer al Radhi of the IIRO

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1 filed an affidavit at one point way back in 2011 stating that
2 the IIRO had two kinds of documents; public documents and
3 documents that were protected from discovery by virtue of the
4 king and his immunity.

5 Now, again, that objection was withdrawn entirely but
6 it does indicate a certain desire to protect certain categories
7 of documents relating to the activities of the charities from
8 disclosure because of the governmental character. There is
9 just no basis to do that.

10 I think, your Honor, there was a recent article in the
11 New York Times in September of 2015 that underscores the issue
12 and that I shared with Mr. Kabat in advance of the hearings.
13 It was issued in September of 2015 and describes the kingdom's
14 efforts to both spread a certain variant of Islam and use those
15 efforts to counter Iranian influence and describes the very
16 close coordination within the Saudi government in doing that.

17 The report indicates that the documents describe an
18 extensive apparatus inside the Saudi government dedicated to
19 missionary activity that brings in officials from the foreign
20 interior and Islamic affairs ministry, the intelligence
21 service, and the office of the king. It goes on to say the
22 intelligence agency, sometime potentially the Saudi-supported
23 Muslim World League helps coordinate strategy.

24 And so, what we understand from all of the information
25 we have gathered largely on our own that these are very

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1 significant positions of respect and of achievement relative to
2 which these individuals interacted, traveled with, met with
3 some of the most senior officials of the Saudi government, as
4 well as foreign dignitaries. People who reach that level of
5 accomplishment maintain some record of their life's work, your
6 Honor, and we are to believe that all four of these individuals
7 are so devoid of any interest in their own accomplishments that
8 they haven't retained a single record responsive to plaintiff's
9 requests? That simply can't be the case. They routinely gave
10 speeches at international conferences, they attended world
11 summits, they met with world leaders. They have some records
12 in their possession that are responsive and we would simply ask
13 that they be directed to undertake the reasonable and necessary
14 efforts to collect them and produce them.

15 Thank you, your Honor.

16 THE COURT: Thank you.

17 Mr. Kabat, why don't you use the microphone over
18 there.

19 MR. KABAT: Your Honor, again, we need context of the
20 discovery.

21 What plaintiffs have not told you is that they served
22 a total of 129 document requests on the four charity officers
23 but of those 129 requests, 97 were identical or substantively
24 identical to the merits discovery request that they served on
25 the Muslim World League and the IIRO.

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1 Plaintiffs have yet to explain why the merits
2 discovery being served on the charities is the same or
3 justified as jurisdictional discovery to be served on the
4 individual defendants because the Second Circuit's opinion was
5 quite clear as to the basis for remanding those four charity
6 officers. As we pointed out in our opposition, the Second
7 Circuit identified five areas and the first area was, quote,
8 whether they allegedly controlled and managed some of those
9 charitable organizations was definitely not a matter of much
10 dispute because the position that these individuals held with
11 each charity is a public record. But, the remaining four
12 categories to the Second Circuit identified are quite narrow,
13 namely, whether through their positions of control of the
14 sureties they allegedly send financial and other material
15 support directly to al Qaeda, whether they directly provided
16 financial and other resources to al Qaeda knowing that al Qaeda
17 was engaged in global campaign, whether this support was
18 "expressly aimed at the United States."

19 Those are the areas that are properly the subject of
20 jurisdictional discovery.

21 THE COURT: Although Mr. Carter would tell me that the
22 list is preceded by a "for example," correct?

23 MR. KABAT: By what?

24 THE COURT: By the phrase "for example."

25 MR. KABAT: The plaintiffs have never told us how

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1 those 129 requests, the vast majority of them they simply cut
2 and paste from the merits discovery are relevant to
3 jurisdictional discovery.

4 THE COURT: Well, your response reduced to a sentence
5 or two is if there are responsive documents they're in the
6 MWL/IRRO production, correct?

7 MR. KABAT: Yes, largely because they're identical
8 document requests seeking documents of the sureties.

9 THE COURT: Well, I guess the follow-on question is
10 have you been through those document productions?

11 MR. KABAT: I have reviewed them. Not every page
12 because there is some 460,000 pages but I would note, and again
13 what plaintiffs fail to mention is the Muslim World League and
14 the IIRO have done incredibly detailed index documents which
15 they gave to the plaintiffs.

16 And if I may give you an example of one of the
17 indexes?

18 THE COURT: Yes.

19 MR. KABAT: This happens to be the index for their
20 most recent production, the December 19, 2014 index, and you
21 will see it indicates for each set of documents the document
22 request that it is responsive to, and in our opposition to the
23 motion to compel we gave the Court -- it is Exhibit 1 to our
24 opposition -- we indicated, for example, al Turki request
25 number is the same as Muslim World League no. 50.

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1 Now, what we could do, it would be an exercise in
2 busy-work, is we could take these indexes and we could simply
3 add the al Turki document requests, the Basha document
4 requests, so forth --

5 THE COURT: But that begs the question of whether your
6 clients, as opposed to Muslim World League or IIRO, have other
7 documents that relate to those requests. As I understand it
8 you are taking the position if there is something responsive it
9 must have been produced by those two entities so therefore we
10 don't have to look.

11 MR. KABAT: It is not quite that simple, your Honor.

12 In a sense what plaintiff has done here is they put
13 the cart before the horse. They came to this Court saying we
14 want discovery responses to all of these 129 requests that were
15 served on each of the four defendants. At no time did
16 plaintiff attempt a meet and confer unlike for other
17 defendants. They never sent us the discovery deficiency
18 letter. They never arranged for a meet and confer where we
19 could go over these requests and figure out which ones were
20 relevant to jurisdictional discovery.

21 THE COURT: Well, did you ever file a formal response?

22 MR. KABAT: What?

23 THE COURT: Did you ever file -- let me rephrase it.

24 Did you ever serve a formal response to their Rule 34
25 requests?

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1 MR. KABAT: Yes, we did, and those are in the exhibits
2 and that was quite a few years back.

3 I mean, Rule 71 expressly requires a meet and confer
4 and plaintiffs, in fact they did meet and confer in our office
5 10 years ago with respect to Al Haramain so plaintiff's counsel
6 knows how to do a meet and confer, they know how to do
7 discovery deficiency letters, yet they deliberately chose not
8 to do so with respect to these four defendants.

9 Now, there are two categories of documents that we
10 discuss in our opposition that were not fully covered by the
11 Muslim World League and IIRO document requests. One is the
12 relationship between the charity and the Saudi government.

13 What plaintiffs don't tell you is that Muslim World
14 League and IIRO collectively produced over 14,000 pages of
15 documents relevant in relationship between the surety and the
16 Saudi government and there is really no basis for the plaintiff
17 to argue that Dr. al Turki has produced the Muslim World League
18 documents relating to the Saudi government when there is some
19 14,000 pages and to the extent the plaintiffs believe that
20 there are some documents they are not included within those
21 14,000 pages that they seek from the Muslim World League. As
22 we know, they should file a motion to compel or seek them from
23 the Muslim World League.

24 Judge Daniels, in his ruling in November, rejected the
25 plaintiff's attempt to link the Saudi government to the

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1 sureties because there is no evidence of day-to-day control and
2 it appeared that the only reason the plaintiffs are really
3 seeking this discovery from the four defendants is not to prove
4 their liability, instead it is a backdoor way to get the
5 government back in the case. An example of that was yesterday
6 Mr. Carter sent me an article from the New York Times which he
7 said he was going to rely upon today. That article actually
8 came out in July of 2015, it is based on Wikileaks which is
9 double hearsay --

10 THE COURT: It is based on what?

11 MR. KABAT: Wikileaks --

12 THE COURT: Okay.

13 MR. KABAT: -- which of course is double hearsay, but
14 the article that Mr. Carter gave me yesterday and aid he was
15 going to rely on specifically says the documents do not show
16 any Saudi support for militant activity.

17 That's what Mr. Carter wanted to rely upon today.

18 The last point I want to make is that plaintiffs, in
19 their document requests, had numerous requests relating to the
20 golden chain which he may remember from years ago when Judge
21 Casey had this case --

22 THE COURT: Let me save you some time. I'm not going
23 to require the production of any documents related to the
24 golden chain so we can move on from there.

25 MR. KABAT: Thank you.

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1 But that illustrates why it would have been helpful to
2 have a meet and confer with the plaintiff's counsel, so we
3 could go over these categories instead of having to argue all
4 129 document requests. And, again, we are still willing to
5 engage in the meet and confer but what the plaintiffs have done
6 is put the cart before the horse, file the motion to compel
7 without doing discovery, without doing a meet and confer.
8 While we are happy to go back and look at the Muslim World
9 League indexes and see which documents relates to our four
10 clients, we think the burden is on plaintiff to have the meet
11 and confer, to identify those few requests that are relevant to
12 jurisdictional discovery as opposed to merit discovery, and
13 then we will move from there.

14 Thank you.

15 THE COURT: Two of your global objections at nos. 5
16 and 6, 5 objects to documents concerning communications by,
17 with, or from the kingdom or its agencies, etc.; and 6 objects
18 to production of documents that are business records of the
19 Muslim World League or IIRO. Since those records are the
20 corporate property of those -- I am paraphrasing -- those
21 entities and the defendants lack personal possession of those
22 records, taking those one at a time, is it your position that
23 if a document that's responsive to a request reflects a
24 communication with the government, even though it is held by
25 one of your clients in his personal possession, it's to be

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1 withheld on sovereign immunity grounds?

2 MR. KABAT: No, we have not made that argument.

3 THE COURT: It is an objection you have listed.

4 And, similarly, are you taking the position that if
5 one of your four clients has in his personal possession a
6 record which is a business record of one of those two
7 charities, that it doesn't have to produce it because the
8 record, in some fashion, belongs to MWL or IIRO?

9 MR. KABAT: It is my understanding that the individual
10 defendants do not have Muslim World League or IIRO records in
11 their personal possession. Only two of them are in fact
12 currently with the Muslim World League, the other two have been
13 long gone, and so while they have an office -- two of them have
14 an office in the Muslim World League there may be file cabinets
15 and such, Muslim World League has gone through those file
16 cabinets and so forth but they don't have the documents at home
17 if that's what you are getting at.

18 THE COURT: Do you know whether to respond to the Rule
19 34 request to the charities their individual records were
20 searched?

21 MR. KABAT: It's my understanding that they were.

22 And getting back to your first question about the
23 Saudi government issue, the point I was making there or the
24 objection we were making is that the individuals do not have in
25 their personal capacity, like at home or separate from the

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1 Muslim World League, Saudi government documents relating to the
2 Muslim World League/Saudi relationship. Those documents would
3 be within the 14,000 pages that the Muslim World League and the
4 IIRO have produced that specifically relates to the Saudi
5 government.

6 Thank you.

7 THE COURT: Mr. Carter?

8 MR. CARTER: Your Honor, a few things.

9 Mr. Kabat made much of the overlap between the
10 discovery served on the charity official defendants and the
11 discovery served on Muslim World League and IIRO.

12 After the Second Circuit remanded the charity official
13 defendants we did two things, we served discovery requests on
14 the individual charity official defendants and we served
15 supplemental discovery requests on the Muslim World League and
16 IIRO and other charities relating to the activities of those
17 individuals as officials.

18 Essentially what happened is that the charity official
19 defendants said go look solely to what they give you and the
20 charity said these are untimely because the cutoff was August
21 2012.

22 Now, I am not at all interested in pre litigating any
23 disputes with regard to the Muslim World League or IIRO but at
24 least the origins of this presented as a bit of a shell game.
25 Now, the Muslim World League and IIRO have produced some

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1 documents that reflect activities of these individuals. We do
2 not think it is at all complete. Again, we will address the
3 sufficiency of their productions with those defendants.

4 THE COURT: How about Mr. Kabat's argument that there
5 has been no meet and confer here?

6 MR. CARTER: Your Honor, we laid out in our reply
7 brief at page 3 that we raised this at multiple hearings in
8 multiple letters to the Court and there was a consistent
9 response: *Go look for their stuff.* And so we came to the
10 Court to say that is not sufficient. That was our point all
11 along.

12 So, we went down this road for a while. There simply
13 isn't an indication on the record, affirmative, in a response,
14 I have searched all of the records in my possession, custody,
15 or control and you have everything responsive to your discovery
16 requests. And again, we don't want to end up at a deposition
17 and have one of these individuals say, well, of course I
18 maintained a diary during the time that I was Muslim World
19 League Secretary, or of course I have copies of all the
20 speeches I wrote and Fatwahs I issued during that time, or of
21 course I have a copy of my passport from those periods.

22 As an example, your Honor, there is an allegation
23 based on US government investigations that Abdullah Omar Naseef
24 was present at the founding meeting of al Qaeda with Bin Laden
25 in the Sudan. The travels of these individuals, as reflected

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1 by their passports, are relevant.

2 To the extent they have received letters of
3 commendation or similar awards that have lauded their
4 activities during their service and outlined what they did, you
5 would have expected them to be kept. One of them received the
6 King Faisal award for service to Islam. That would describe
7 what that person did.

8 THE COURT: How does that add to the jurisdictional
9 discovery?

10 MR. CARTER: I think the proper question in the
11 jurisdictional discovery was what did these individuals do at
12 these charitable organizations, what was the nature of their
13 roles. I can give you an example, your Honor.

14 In our own investigations we have, by way of example,
15 a report in the Arabic version of the Muslim World League
16 Journal dating to the period in 1992 where defendant Naseef
17 attends a meeting with members of the royal family and the
18 Saudi Grand Mufti, who is the government official during which
19 Naseef thanks the King for the generous support of the Muslim
20 World League and the Grand Mufti indicated the jihad fighters
21 must be encouraged worldwide. A year later Naseef again thanks
22 King Fahd for a donation of 20 million given for Muslims in
23 Bosnia so they could continue their legal jihad against the
24 Serbs.

25 So, these kinds of dialogues about policy issues,

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1 global events, are very relevant to the determination as to
2 whether or not these individuals were responsible for setting
3 in motion the program of support we have described in other
4 pleadings. And, again, it is a matter of them going and
5 searching their own records in the same way that the Court
6 directed defendant Jelaidain to do so.

7 Thank you, your Honor.

8 THE COURT: How about the passports, Mr. Kabat?

9 MR. KABAT: I can ask him for that but I think the
10 proper way --

11 THE COURT: I gather there was a specific request that
12 asked for those. What was your response to that request?

13 MR. KABAT: I don't --

14 THE COURT: Mr. Carter, can you point me in the right
15 direction here?

16 MR. KABAT: Again, your Honor --

17 THE COURT: Hang on just a minute.

18 MR. CARTER: I think in a moment we will be able to.
19 I know there were requests relating to travel to places like
20 Sudan, Afghanistan, Pakistan during relevant periods and,
21 again, that certainly would have encompassed a passport.

22 THE COURT: I thought there was a specific reference
23 to supports in the request.

24 MR. CARTER: There probably was. But I think, your
25 Honor, regardless of the individual request, the overarching

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1 response was go look at what the charities produced. And what
2 we are really here about is compelling the defendants to
3 conduct their own searches.

4 MR. KABAT: Your Honor, regardless of whether the
5 request asked for the passport, the reality is the plaintiffs
6 simply cut and pasted their merits discovery into the four
7 individual defendants and they have not bothered -- they have
8 not bothered -- to meet with us, to send us a discovery
9 deficiency letter, completely at all with Rule 37 meet and
10 confer requirement.

11 THE COURT: Well, but the passports would seem to be
12 something that the charities would not have produced that
13 perhaps -- well, I don't see one that relates to passports but
14 I do see 89: Provide all documents relating to any trips you
15 took to Sudan; and 90 is the same for trips to Afghanistan.
16 Let me take a moment and look at the responses.

17 (pause)

18 THE COURT: Unfortunately they don't track from
19 defendant to defendant.

20 (pause)

21 THE COURT: Well, here. For 89 and 90 the answer to
22 both is: See objections to document request no. 10. Document
23 request no. 10 says: Defendant objects to this request as
24 overly broad seeking documents relating to his employment with
25 the government of the Kingdom of Saudi Arabia which has

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1 sovereign immunity; improperly seeks official records of the
2 Saudi government; improperly seeks business records of the MWL
3 and IRRO; and goes on and on. And going back to the specific
4 answers it says: Defendant will produce responsive documents,
5 if any, when available.

6 So, I think what I am going to do is, first of all,
7 invoke the current version of Rule 34 -- bear with me a
8 second -- which requires that an objection state
9 specifically -- let me read it: *An objection must state*
10 *whether any responsive materials are being withheld on the*
11 *basis of that objection.*

12 So, I am going to require several things. First, a
13 sworn or affirmed certification from each of the four charity
14 defendants that except to the extent to which they have
15 specified that a document is being withheld, they have produced
16 all documents responsive to the requests unless those documents
17 are part of the productions of the MWL or IIRO. Secondly, that
18 there be a privilege log if there are documents being withheld
19 on the basis of privilege.

20 I think at the moment that's all I need direct with
21 respect to the motion related to these four defendants.

22 Is there something else you seek, Mr. Carter, at the
23 moment?

24 MR. CARTER: Your Honor, only based on the response
25 that you read to the request, which very much seemed to invoke

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1 a sovereign immunity defense with respect to documents
2 potentially in the possession of these defendants and Mr. Kabat
3 had said that no such objection was being asserted and I think
4 we just want clarification that there is no sovereign immunity
5 objection being asserted.

6 MR. KABAT: No, we are not asserting that defense with
7 respect to their own documents but I do have a question for
8 you.

9 THE COURT: Let me just add that within the documents
10 to be listed on a privilege log are any documents being
11 withheld on sovereign immunity grounds that are responsive but
12 I gather you just told me that there are no such documents.

13 MR. KABAT: Well, I will check with the clients,
14 obviously.

15 I do have two questions for you.

16 THE COURT: Sure.

17 MR. KABAT: First of all, you said that the requests
18 related to the golden chain are off the table.

19 THE COURT: Correct.

20 MR. KABAT: Now, of the remaining hundred-odd
21 requests, are you directing us to answer all of them regardless
22 of whether they have anything to do with jurisdictional
23 discovery? I think it should be a little more focused on those
24 requests that relate to jurisdictional discovery as opposed to
25 the hundred-odd requests, many of which really are merits

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1 discovery and we have not undertaken a search for that.

2 THE COURT: Well, I think by invoking the provision of
3 Rule 34 that I have directed you to comply with, it will become
4 clear whether you are withholding documents. I think there may
5 be categories of documents or requests as to which your
6 response is we have nothing beyond what the corporate charities
7 have produced and therefore there is not much point in worrying
8 about whether the request relates to jurisdictional or merits
9 discovery.

10 If, at the end of the process I have just directed
11 there are lingering issues, you can bring those back to the
12 Court or Mr. Carter can, but I think for the moment this takes
13 us further down the road.

14 MR. KABAT: Thank you.

15 MR. CARTER: Thank you, your Honor.

16 THE COURT: You said you had two points?

17 MR. KABAT: Pardon?

18 THE COURT: I guess the other was the golden chain.
19 Thank you.

20 MR. CARTER: Your Honor, I'm sorry.

21 THE COURT: Yes.

22 MR. CARTER: With regard to the golden chain, and I
23 don't want to belabor this point because I understand the
24 Court's ruling, but there are people on the golden chain other
25 than the contributors, for instance Wael Jelaidain is listed on

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1 the golden chain, Osama Bin Laden is listed on the golden
2 chain. And so, we just want clarity that you are not talking
3 about those people.

4 THE COURT: That's correct.

5 MR. CARTER: Thank you.

6 THE COURT: I am talking specifically about the
7 requests that use the phrase "and seek those documents."

8 MR. CARTER: Thank you, your Honor.

9 THE COURT: So, if there were other more specific
10 requests, those, of course, are not affected by that ruling.

11 MR. CARTER: Thank you, your Honor.

12 THE COURT: We can break for lunch now or we can deal
13 with the next one.

14 Mr. Haefele?

15 MR. HAEFELE: I leave it up to you, your Honor.

16 THE COURT: Why don't we move on.

17 Okay. Fire away, Mr. Haefele.

18 MR. HAEFELE: Your Honor, I think it is a good
19 afternoon at this point. We made it past, into the afternoon.

20 Robert Haefele from Motley Rice for the plaintiffs,
21 your Honor. I am here to talk about the plaintiff's motion
22 regarding Soliman Al-Buthe.

23 Much of what Mr. Charter had to say about the other
24 charity officials applies also to Mr. Al-Buthe and I refer back
25 to the dialogue that you had with Mr. Carter for what was said

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1 for those defendants that crosses over to Mr. Al-Buthe and I
2 will stick, hopefully, with the stuff that is particular to
3 Mr. Al-Buthe.

4 What I understand that we are here to discuss is the
5 remedy that is sought by the motion that the plaintiffs filed
6 was under Rule 37(a) for an order compelling Mr. Al-Buthe to
7 produce documents and information responsive to the discovery
8 requests served on August 22, 2013, and the plaintiffs also
9 requested consistent with what your Honor did with
10 Mr. Jelaidain, that there be production verifying that the
11 defendants and his counsel moved to undertake vigorous efforts
12 to produce documents.

13 THE COURT: I was about to ask you whether you want
14 something beyond what I just ruled with respect to the
15 charitable defendants.

16 MR. HAEFELE: Your Honor, I think I didn't make all of
17 my notes and I didn't review my notes from what you had and I
18 think the answer is probably, to some extent, yes, we are
19 asking for that response.

20 One of the things we did in this, your Honor, is we
21 did go through and did articulate why each and every one of the
22 requests that we did for Mr. Al-Buthe -- and they were
23 distinct, I believe, from the ones on the other charitable
24 defendant I compared partly because Mr. Carter was taking care
25 of that motion, I didn't actually compare the requests and they

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1 were done separately so I do think the requests are separate.

2 I will give you a for instance.

3 I do know that with regard to Mr. Al-Buthe there is a
4 very specific request that relates to the request for his
5 passport and that's request for production 19 which very
6 specifically says not only his passport but identifies some of
7 the passports that we are articulating. And we do know that he
8 has represented he has in his possession all of his passports,
9 not just the current ones but the past ones; he has all of them
10 in his possession. At least at some point during the course of
11 the pendency of this litigation he represented so.

12 THE COURT: I am looking at request 19, the response
13 says: See the objections to request 2, which is similar to the
14 one I read with respect to the charity defendants except it
15 also says it is beyond the limited scope of jurisdictional
16 discovery authorized by the Court of Appeals and case
17 management order no. 2 and has a lot of similar verbiage.

18 MR. HAEFELE: The way I would summarize it is overly
19 broad, seeks al-Haramain and other business entities' business
20 records.

21 THE COURT: Right.

22 MR. HAEFELE: Not jurisdiction; overstates filing of
23 the action and is not relevant.

24 THE COURT: That is a summary.

25 MR. HAEFELE: So, but I do think with regard to the

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1 substance of the fact that he has a passport and he hasn't
2 produced it is similar in vein with what your Honor addressed
3 with regard to the other charity officials.

4 THE COURT: One distinction here is that Mr. Al-Buthe,
5 through counsel, asked for more time to produce documents but
6 then, as I understand it, didn't produce anything further.

7 MR. HAEFELE: He did not. He has produced zero
8 documents, although actually in his responses I think he
9 indicated that he was going to produce a document and he
10 indicated a week later or some short period later that there
11 was a tranche of documents related to Mr. Al-Buthe that they
12 anticipated producing but nothing ever surfaced with regard to
13 that.

14 If I can set a little bit of the context for
15 Mr. Al-Buthe's approach to the litigation? I remind your Honor
16 of a hearing early in this litigation back in -- way back in
17 May of 2004 before Judge Casey where Mr. Al-Buthe was arguing
18 that the plaintiffs' service on him was defective and his
19 argument rested on the fact that the plaintiffs had initially
20 served Mr. Al-Buthe at an address that he had indicated in
21 government filings that he was -- that is to the IRS -- that
22 there was a particular location where it was his office here in
23 the U.S., that's where the service was made. And the argument
24 was it wasn't really the right address, the right address was
25 nearby but the address that we had used to serve him was

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1 actually a post office box location. And you know, that, just
2 to summarize, in the dialogue that Mr. Al-Buthe had with the
3 Court, Judge Casey ended up cautioning Al-Buthe saying, Don't
4 blow smoke at me, and ultimately he concluded the exchange by
5 admonishing Mr. Al-Buthe: This kabuki dance is over.

6 I think one of the things that we are feeling is that
7 the kabuki dance has never ended and that we are near 12 years
8 later and Mr. Al-Buthe -- well, I would say he must be very
9 tired because he has still been dancing.

10 The procedural history we have here, your Honor, is on
11 April 16, 2013, the Second Circuit overturned the December 14th
12 2011 decision dismissing Mr. Al-Buthe. On October 22, 2013,
13 plaintiff serves their jurisdictional discovery requests.
14 After receiving a requested four-week and then another
15 three-week extension, as your Honor indicated a total of seven
16 weeks from the original date of the production, on November 11,
17 2013 Mr. Al-Buthe served only objections with zero documents
18 included in the production and since then he has produced zero
19 documents in response to plaintiff's discovery requests. And
20 then, on August 10, 2015, the plaintiffs moved.

21 What Mr. Al-Buthe does not respond to and so I think
22 our position is these issues are waived, aside from Al-Buthe's
23 conclusory assertion that plaintiffs requests fall outside of
24 the confines of the permitted jurisdiction of discovery which
25 our position is they obviously do not, he does not address any

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1 of the plaintiffs description of the jurisdictional nature of
2 the various categories in plaintiffs August 10, 2015 motion.

3 Mr. Al-Buthe does not counter plaintiff's arguments
4 against the various boiler plate objections including his
5 objection that requests are overly broad or that certain
6 requested documents post-dated the filing of the actions which
7 I think were also issues that were raised in the last
8 discussion regarding the other charity defendants, but he
9 doesn't oppose those in his opposition.

10 After evading his independent obligation to respond to
11 discovery since August 2013, he wrote that discovery is not
12 jurisdictional in nature and insists that he should otherwise
13 be excused from his independent obligations.

14 I think, your Honor, I believe your Honor addressed
15 what the scope of the jurisdictional discovery assessment was
16 from the Second Circuit but I can tell you what I think,
17 consistent with what you said, your Honor, the way we had
18 phrased it is whether Al-Buthe directed tortious conduct at the
19 U.S. through his role as the primary financier in support of
20 al Qaeda and Bin Laden including through the organizations and
21 financial networks under his control. It was not the
22 statements that counsel selected out of the opinion to support
23 a very, very narrow, extremely narrow if it goes to these
24 statements then you can get discovery on it; it was based on
25 that articulation I think that we just said.

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1 In fact, the Second Circuit recognized that the
2 plaintiff's jurisdictionally relevant allegations concern
3 whether Al-Buthe had expressly aimed his conduct at the United
4 States by providing material support to al Qaeda when it was
5 known that al Qaeda was engaged in a global terrorist agenda
6 directed at the United States.

7 There were a number of document requests, your Honor.
8 First, before I go into the specific request I would like to
9 address some of the broad -- what I would call -- boiler plate
10 objections which, again, our position is they waived them but I
11 do want to not just cast them aside.

12 They're overly broad objections. It just was never
13 supported, never indicated why they contend that they were
14 overly broad and they have the obligation to carry that burden,
15 your Honor.

16 I think your Honor already addressed the other
17 document objections, in other words production of documents
18 from other entities and our position is, your Honor, if the
19 documents that we have requested are in Mr. Al-Buthe's control
20 or he has the ability to produce them, he has the obligation to
21 produce them and there are documents, as we know from
22 al-Haramain's production and, just for the record, Mr. Al-Buthe
23 is an Al-Haramain official or was an Al Haramain official.

24 THE COURT: Al Haramain, Saudi Arabia?

25 MR. HAEFELE: Pardon me?

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1 THE COURT: Al Haramain, Saudi Arabia?

2 MR. HAEFELE: Well, he had a position -- he was one of
3 the officers of the Al-Haramain U.S.A. office but he was also
4 articulated in a number of documents as being a senior official
5 of Al-Haramain Saudi Arabia. I don't know that he actually
6 held a title there but he certainly held a position of
7 authority there and it is my understanding from the documents
8 to be seen that he had an office, if you will, in Saudi Arabia
9 that was an Al-Haramain physical office or physical location.

10 THE COURT: Al-Haramain, Saudi Arabia was the entity
11 that was shuttered by the government, correct?

12 MR. HAEFELE: Allegedly so.

13 THE COURT: Okay.

14 MR. HAEFELE: It has been indicated to be so.

15 And, as we know from the Al Haramain production,
16 number one, we did not get Al Haramain, Saudi Arabia documents.
17 They did not participate in any of the productions, they did
18 not participate in essentially anything in the litigation. And
19 as we know from the productions which your Honor addressed a
20 number of times with regard to Al Haramain, U.S.A., there were
21 gaps in their production, if you will. I don't need to get
22 into that but your Honor has addressed those arguments before
23 and there were gaps.

24 So, bottom line, if there are documents that
25 Mr. Al-Buthe has in his care, custody or control or that he has

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1 the practical ability to produce for us, then he should be
2 doing that.

3 With regard to their objection about documents
4 post-dating the filing, I think your Honor may have addressed
5 this previously but just to be clear, for example, documents
6 about investigations that look back, documents about
7 investigations that happened post-2001 that look back to
8 earlier times, those documents would be documents that would be
9 relevant for production even if they fall outside of the date
10 of the filing of the case.

11 What I would like to do now is turn, your Honor --

12 THE COURT: Let me just ask you about one of the
13 points that Mr. Kabat makes which is there was no meet and
14 confer here.

15 MR. HAEFELE: Your Honor, similar to what Mr. Carter
16 addressed, in our response we did lay out substantially what
17 our meet and confer was. If you look at ECF 3111 page 2 to 3?
18 If you give me a minute I can flip to that and go through that
19 with you.

20 THE COURT: No, I have read that.

21 MR. HAEFELE: Does that answer your question, your
22 Honor?

23 THE COURT: Yes. That's fine.

24 MR. HAEFELE: In short, I would say that it is not
25 true that we didn't meet and confer. In fact, we tried. They

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1 rejected. Their position consistently was we are not planning
2 on producing anything and it seemed that there was futility in
3 going further and being deferred at that point. And I am
4 making it fairly concise but there was a number of instances
5 where that dialogue back and forth happened.

6 If I can march through, it is in our moving papers but
7 we have categorized the document production requests in certain
8 categories and some of them may even combine further, for
9 example I think the first two categories are financial
10 transaction documents of Al-Buthe, his family, and accounts
11 related to Al-Haramain.

12 He had access, obviously, to his own financial
13 accounts and accounts that were in his name, accounts where he
14 had signature authority. His own accounts were part of the
15 allegations, actually regarding the moving money, Haramain
16 money to al Qaeda, Mujaheddin.

17 He also had significant control over financial
18 dealings of al-Haramain U.S.A. but spent much of his time not
19 in the U.S. so many of the documents, presumably, would have
20 been in Saudi Arabia including, for example, documents related
21 to e-mails concerning financial transactions and things along
22 those lines.

23 So, certainly whether it is documents related to
24 financial transactions of his own or Al-Haramain or folks that
25 he may have run financial transactions through, all of those

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1 are documents that he would have been obligated to produce and,
2 again we have gotten nothing.

3 His alleged support for al Qaeda using his sources
4 under his control is at the core of the allegations that he
5 conducted his conduct at the U.S. and I think that demonstrates
6 the jurisdictional hook, if you will, for both discovery
7 requests 1 and 2{ }-- both categories 1 and 2.

8 Similarly, documents related to Al-Buthe's indictment
9 here in the U.S. by the Department of Justice, investigations
10 about him, his listing and delisting and sanctions by the U.S.,
11 U.N. and by other entities, as well as his internal inquiries
12 into those allegations.

13 For example, he is a man of -- a prominent businessman
14 with contacts and resources. It is hard to believe that when
15 he had allegations being leveled against him including
16 indictments here in the U.S. and U.N. and U.S. sanctions and
17 sanctions by other worldwide entities, it is hard to believe
18 that he did nothing to investigate allegations of his
19 wrongdoing. And the fact that he has produced nothing
20 regarding those investigations, those actions, or his
21 investigations into those allegations makes it hard to believe
22 that he has nothing to produce. And clearly those allegations
23 are, again, at the heart of the allegations against him
24 concerning his direction and conduct at the U.S.

25 The next category is items personal to Mr. Al-Buthe;

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1 his bio, a lot of information you would want in a case and that
2 is where his passport falls in. Those are -- is it is hard to
3 believe that he doesn't have access to those documents, your
4 Honor. As was mentioned earlier, the fact that prominent men
5 like this do not keep records of their accomplishments is just
6 very hard to believe, that he didn't have some kind of resume,
7 some kind of biographical information, and it is hard to
8 believe since he has articulated that he has a passport that he
9 didn't have his passport.

10 I think we already covered documents in his position
11 regarding the Al-Haramain entity then documents related to his
12 interrelationships within or among terrorists, those documents
13 evidence Al-Buthe's dealings with other alleged co-conspirators
14 and may underscore the defendant's knowledge so they have a
15 jurisdictional hook in that sense.

16 So, your Honor, we have gone through and it is -- my
17 summary right here I think is in some detail laid out in the
18 brief and there has never been a response to those allegations
19 of jurisdictional connection.

20 So, to the extent that there is argument on the other
21 side that we have not demonstrated why these document
22 production requests are jurisdictional, that's something that
23 has never been responded to.

24 THE COURT: I think what we will do, rather than going
25 on to Mr. Kabat, is take our lunch break now. Why don't we say

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1 we will resume at 2:15.

2 MR. HAEFELE: Your Honor, can I --

3 THE COURT: Oh sure. I didn't mean to interrupt you.

4 THE MARSHAL: I have three things to tie up.

5 THE COURT: I thought you were done.

6 MR. HAEFELE: I am nearly done.

7 THE COURT: Okay.

8 MR. HAEFELE: It is merely several of his
9 miscellaneous arguments that I just want to make sure we tie
10 up.

11 THE COURT: Sure.

12 MR. HAEFELE: Our position is they don't matter.

13 For example, he makes an argument that Mr. Sedaghaty's
14 conviction was vacated, that was material to Mr. Al-Buthe's
15 production. We have argued multiple times that Mr. Al-Buthe's
16 U.N. delisting plays no part in what his production obligations
17 are.

18 THE COURT: Stated more generically, as the merits are
19 essentially irrelevant at this stage, even if Mr. Kabat or
20 Mr. Al-Buthe are correct, that that's not the issue before me
21 now.

22 MR. HAEFELE: I think the last two things I would say
23 is earlier we had some kind of chart that showed the cross
24 connection between the requests and the Al-Haramain requests
25 and that doesn't exist here so that is one differentiation. I

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1 don't know whether that mattered to your Honor.

2 THE COURT: It was the MWLA or IIRO. I am aware of
3 that.

4 MR. HAEFELE: Correct.

5 In this instance one of the -- I think there was a
6 reference from Mr. Carter indicating how the charity officials
7 there had interconnections with other entities in the
8 litigation and here I think it is obvious he had
9 interconnections with Al-Haramain, U.S.A., he had connections
10 with Al-Haramain, Saudi Arabia, and he also had connections
11 with the Kingdom of Saudi Arabia because he is an employee of
12 the Kingdom of Saudi Arabia. He actually, in his position
13 reports, directly to the Mayor of Riyadh who was at the time
14 was royal. I don't know who it is now.

15 THE COURT: Do you still have an Al-Haramain U.S.A.
16 production or is it simply all of that material that eventually
17 became disclosable pursuant to Court order?

18 MR. HAEFELE: There were Al-Haramain productions in
19 addition. In fact, earlier than that. That was the later of
20 the productions, I believe.

21 THE COURT: Okay.

22 MR. HAEFELE: That's all I have, your Honor.

23 THE COURT: So, we will resume at -- why don't we say
24 2:15. We will make it 2:20.

25 MR. CARTER: Your Honor, a minor question. We have

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1 some boxes of stuff here; do you mind if we leave them in the
2 courtroom?

3 THE COURT: Not at all.

4 MR. CARTER: Thank you.

5 THE COURT: As long as it is something -- we are not
6 going to lock the courtroom.

7 MR. CARTER: It is just the filings, your Honor, so.

8 (Luncheon recess)
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A F T E R N O O N S E S S I O N

2:20 p.m.

THE COURT: Go ahead. Mr. Kabat.

MR. KABAT: Good afternoon, your Honor.

I want to respond to some of the arguments that Mr. Haefele raised about discovery about Mr. Al-Buthe but, most importantly, Mr. Haefele misrepresented the Second Circuit's opinion by saying that they were entitled to discovery that he expressly aimed his conduct to this country. That is not the standard in the Second Circuit.

The Second Circuit decision is that whether there is material support for al Qaeda was expressly aimed at the United States, so jurisdictional discovery is not everything that Mr. Al-Buthe did that might be directed at this country, it has to relate to al Qaeda, material support for al Qaeda. And that gets back to the same problem we had with the other defendants in terms of plaintiffs are trying to seek merits discovery for Mr. Al-Buthe, were willing to discuss jurisdictional discovery with either Mr. Carter or Mr. Haefele. They have said that we refused to meet with them and they quoted that Exhibit B confirmed that I said that we had refused to meet. In fact, Exhibit B said no such thing, I have no idea what they're referring to but, again, plaintiff as you know, did discovery deficiency letters, or they never bothered to do a discovery deficiency letter as to Mr. Al-Buthe and they reached out to me

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1 and said let's have a meet and confer.

2 There is no e-mail on that. So, with that
3 clarification out of the way.

4 THE COURT: Well, is it correct that you haven't
5 produced, on behalf of Mr. Al-Buthe, a single document?

6 MR. KABAT: Pardon?

7 THE COURT: Is it correct that you have produced no
8 documents?

9 MR. KABAT: Apart from Al-Haramain? That's correct.
10 Because Al-Haramain documents, originally Mr. Al-Buthe thought
11 that he would be able to get documents from Al-Haramain, Saudi
12 Arabia but what happened is the Saudi government shuttered
13 Al-Haramain, Saudi Arabia, as you observed before lunch, and
14 Mr. Al-Buthe was no longer able to access the Saudi documents
15 that he thought he might be able to produce and so there was
16 nothing left for him to produce with respect to Al-Haramain.

17 THE COURT: What about with respect to -- let me go
18 back a step.

19 A lot of your letter deals with the merits basically
20 saying the result in the trial in Oregon involving Mr. Seda led
21 to a reversal and Mr. Al-Buthe has been delisted by the United
22 Nations.

23 MR. KABAT: Right.

24 THE COURT: But you haven't produced any documents
25 that relate to the delisting or your representation, which you

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1 seem to think is significant in terms of jurisdictional
2 discovery that the United States allegedly is also going to
3 delist him even though I presume those would not be Al-Haramain
4 documents but would be Mr. Al-Buthe's individual documents.

5 MR. KABAT: Well, your Honor, the plaintiff's position
6 with respect to the de listing of Mr. Al-Buthe is that it has
7 no relevance to the claims or defenses in this litigation and
8 there is settled law you can't get discovery unless something
9 is relevant.

10 Plaintiffs are trying to have it both ways, they're
11 trying to say, oh yeah, the delisting is irrelevant to claims
12 and defenses. On the other hand they're saying we want
13 discovery of something that we have admitted is irrelevant.

14 Plaintiff can't have it both ways.

15 THE COURT: You seem to think it is relevant because
16 your letter goes on for several pages about that and
17 presumably, therefore, it is relevant in some fashion.

18 MR. KABAT: Your Honor, our position with respect to
19 the relevancy of the delisting is that either plaintiff can
20 concede that both the designation and the delisting are
21 irrelevant, they're off the table, or if they concede that the
22 designations -- excuse me, if they insist that the delisting is
23 relevant --

24 THE COURT: Well, I assume since they requested it --
25 Mr. Haefele can correct me if I am wrong -- they think it is

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1 potentially relevant.

2 MR. HAEFELE: Your Honor, I don't need to correct you
3 because I think you are right, but I would add it is relevant
4 on the allegations underlying the listing as well as the
5 allegations of the considerations for the delisting. The
6 arguments in response to the listing and delisting and to the
7 defendant's defenses.

8 MR. KABAT: Well, all I can say is plaintiffs have
9 flip-flopped about the delisting. We are willing to produce
10 the information about the delisting if plaintiff is willing
11 concede that it is relevant, but if plaintiff's position is not
12 relevant then we don't see why we should have to produce it. I
13 mean --

14 MR. HAEFELE: Your Honor, may I respond? There is a
15 fundamental confusion there.

16 The fact of the delisting is not relevant. The claims
17 why they were delisted and the considerations related to the
18 arguments for delisting is what is relevant. It is the
19 arguments and the information exchanged, not the fact of the
20 delisting.

21 THE COURT: Well, if you put the word "potentially" in
22 front of "relevant" I am inclined to agree with you. Of
23 course, none of us know what that information is. There could
24 be admissions or false statements or potentially useful
25 information there but I agree that the fact of delisting,

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1 particularly since it is only by the United Nations not by the
2 U.S. at least at this point, is not relevant.

3 MR. KABAT: Your Honor, we think the delisting is
4 relevant and would be willing to produce the documents if the
5 plaintiff would agree to that too, that it is relevant.

6 THE COURT: If I order it, whether they agree to it or
7 not, you are going to produce it or other consequences will
8 flow.

9 MR. KABAT: Mr. Haeefele also discussed the criminal
10 case and why Mr. Al-Buthe had not produced anything with
11 respect to the criminal case. It is a very simple answer. He
12 has never been served with the indictment. He has nothing to
13 produce in that sense.

14 So, because he was in Saudi Arabia around the time the
15 indictment was issued, he has not left the country since then,
16 and I should note with respect to plaintiff requests for the
17 passport it is my understanding that after he was designated
18 the Saudi government took his passport, confiscating it, so he
19 could not travel outside the country.

20 So, there is nothing to produce there. Now that he
21 has been delisted by the United Nations he may be able to get
22 his passport back but we will see.

23 THE COURT: So, in the period prior to -- well, forget
24 the period prior to, the representation is that he currently
25 has no passport and doesn't have any expired passports.

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1 MR. KABAT: That is my understanding.

2 THE COURT: Okay.

3 MR. KABAT: And I would note that the document
4 requests that Mr. Haefele noticed were served after 2013 and
5 the passport and designation had been confiscated I think
6 around '04, '05, and likewise the shuttering of Al-Haramain was
7 also back in '04, '05, years before the discovery requests were
8 served on Mr. Al-Buthe.

9 Mr. Haefele also claimed that we should have produced
10 documents relating to Mr. Al-Buthe's "investigation of the
11 allegations in the complaint." Well, whatever the
12 investigation did was in connection with his attorney and the
13 attorney-client privilege and this Court has already agreed
14 with the parties that they do not have to produce documents
15 relating to the attorney-client communications nor after 9/11
16 relating to them, any allegations in the complaint including
17 the investigation.

18 Mr. Haefele also mentioned that we should produce
19 Mr. Al-Buthe's resume and documents showing his
20 accomplishments. Well, it is not clear to me how that is going
21 to tie back to whether he expressly aimed his support of
22 al Qaeda or expressly aimed "intentional tortious acts at
23 residents of the United States." That gets back to the
24 original problem we have which is plaintiff is trying to seek
25 merits discovery against a jurisdictional defendant and, again,

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1 if we had had a meet and confer we could have hashed this out
2 with the plaintiffs.

3 And I would note that plaintiffs in fact did have a
4 meet and confer with us with respect to Al-Haramain many years
5 ago, we had two attorneys from South Carolina and two attorneys
6 from New York came to our office, we had a productive session.

7 So, plaintiffs know how to do a meet and confer but
8 apparently they don't want do it here and they didn't want to
9 do it for the al Turki defendants. And, again, we are still
10 willing to meet and confer with them to identify the specific
11 document requests that go to jurisdictional discovery as
12 opposed to merits discovery.

13 If there are no further questions, thank you.

14 THE COURT: Anything else, Mr. Haefele?

15 MR. HAEFELE: Your Honor, just one quick point.

16 In Exhibit F to our -- it is at ECF no. 2990-6.

17 THE COURT: Yes, I have it in front of me.

18 MR. HAEFELE: I believe it is the declaration or as
19 part of that exhibit there is a declaration of Mr. Al-Buthe
20 dated August 4, 2010 and I believe it is from that declaration
21 that we quote and I haven't been able to locate it while we are
22 talking, it is from that declaration where we pulled the
23 statement that he has, in his possession, his passports.

24 While I am looking at it might I suggest that one of
25 the things your Honor might want to know --